

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 938 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHARVAD NATHIBEN D/O LAKHA SAVA

Appearance:

Mr.D.N.Patel, Addl. Public Prosecutor for
appellant
MR BJ Jadeja for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 18/08/98

ORAL JUDGEMENT

State has preferred this appeal against the order of acquittal recorded by learned Sessions Judge, Jamnagar on 14.9.1988 in Criminal Appeal No. 56/1987, setting aside the order dated 12.11.1987 passed by Judicial Magistrate First Class, Kalavad in Criminal Case No. 75/86.

2. Short facts as it emerges from the record are as under:-

Complainant Bhagat Hira Karsan was rendering services in a temple as a Priest while respondent-accused No.1 was working as a servant ('sevak') in the same temple. It is also alleged that one Bhima Lakha also worked for some time as a Priest along with Bhagat Hira Karsan, the complainant. On or about 25.6.1985 between 1.00 to 1.30 a.m., respondent Nathiben and Bhima Lakha, the absconding accused, removed ornaments and a sum of Rs.2500/- belonging to the temple and thereby committed offences punishable under sections 381 and 114 of the Indian Penal Code. Original accused No. 1, 3 and 4 were charged sheeted on 29.1.1986. Accused No.2 Bhima Lakha was found absconding, and, therefore, his case was separated from other accused.

Complainant Bhagat Hira Karsan expired on 8.7.1985. Complaint Exh.64, has been produced on the record. According to the contents of the complaint, respondent Nathiben, accused No.1, was engaged to look after the complainant and the property of the temple and was staying with the complainant since about 6 to 7 years. The trial Court, on appreciation of evidence came to the conclusion that the respondent was working in the capacity of 'sevak' and when she was discharging her duties, she came in possession of the articles as well as cash and as she has removed the articles and cash, the offence would be punishable under section 408 of the Indian Penal Code. However, on behalf of the accused, it was specifically pleaded that the respondent accused was wife of complainant and the ornaments alleged to have been stolen belonged to her and these ornaments were her 'streedhan' property. The trial Court came to the conclusion that there is no positive evidence by which it can be said with assertion that she was a wife of the complainant. Further, the evidence disclosed that on the next day of the complaint, respondent No.1 got married with accused No.2 and in the certificate of marriage it was specifically stated that she was unmarried. The trial Court was of the view that it is necessary to hold an inquiry for the purpose of delivering the muddamal articles. In the absence of report of Probation Officer, the trial Court, after convicting the accused under section 408 of the Indian Penal Code, released the respondent on probation and acquitted the original accused No.3 and 4.

Against the said order of conviction, appeal was preferred by respondent No.1 being Criminal Appeal No. 56/87 before the Additional Sessions Judge, Jamnagar. On appreciation of evidence, learned Sessions Judge Jamanagar, on 14.9.1988 allowed the appeal partly and set

aside the order of conviction recorded under section 408 of the Penal Code and acquitted accused No.1 for the aforesaid offences. This appeal is preferred against the said order of acquittal.

3. The respondent has come out with a case that the muddamal articles are 'streedhan' and she has committed no offence. It also emerges from the evidence that the respondent was residing with Bhagat Hira Karsan as his wife. Panchas did not support the prosecution to prove that the muddamal articles were removed from possession of the complainant. Panchas have also not supported the prosecution with regard to the scene of occurrence. Soni Navnitlal Exh.42 has also not supported the prosecution version. From the evidence of Shantilal Govind, it appears that Navnitlal produced three ornaments under panchnama Exh.45. Witness Sundardas Morardas Exh.56 has specifically stated before the Court that the respondent Nathiben was wife of the complainant Bhagat Hira Karsan. This evidence is to be read with the Will executed by the deceased Bhagat Hira Karsan wherein he has specifically indicated that the respondent-accused was his wife. He has not mentioned in the Will as 'sevika' but has mentioned as 'wife'. If this Will is taken into consideration along with the evidence of Sundardas Morardas, it cannot be said that the view taken by the appellate Court is perverse. The appellate Court came to the conclusion that the prosecution has failed to prove that the respondent-accused was 'sevika' and the articles and amounts were entrusted to her in the capacity as a 'sevika'. It appears that the appellate Court has drawn the conclusion from the aforesaid evidence. Prosecution has failed to prove its case beyond reasonable doubts, but at the same time the appellate Court has not disturbed the order of the trial Court directing inquiry for handing over possession of muddamal articles.

4. This is an appeal against the order of acquittal. The Court has carefully gone through the evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power. However, in view of the findings recorded by the learned Sessions Judge, it cannot be said that the order is perverse or that the view taken by the learned appellate Court could not have been taken on the evidence on the record of the case.

In the result, the appeal stands dismissed.

6. Stay granted by this Court on 22.11.1988 stands vacated. It is directed that the trial Court shall proceed with the inquiry and will conclude the same within a period of six months from today.

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